United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

74-1388

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 74-1388

RAUL ORTEGA ALVAREZ, CIRO CALANA, JORGE INFIESTA, CHARLES BUSIGO CIFRE, DOMINGO DEL CRISTO, ARMANDO ALVAREZ AND CIRILO FIGUEROA

Defendants-Appellants

vs.

UNITED STATES OF AMERICA,

Plaintiff-Appellee

APPELLANT ARMANDO ALVAREZ

REPLY BRIEF

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UNITED STATES COURT OF APPEALS

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RAUL ORTEGA ALVAREZ, CIRO CALANA, JORGE INFIESTA, CHARLES BUSIGO CIFRE, DOMINGO DEL CRISTO, ARMANDO ALVAREZ, AND CIRILO FIGUEROA.

DEFENDANT APPELLANTS

V.

UNITED STATES OF AMERICA,

APELLEE.

APPELLANT'S ARMANDO ALVAREZ REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITHIES

AUTHORITHIES

VI Ammedment (Constitution of the United States)
XIV Ammedment (Constitution of the United States)
72nd Harvard Law Review 920.

PRELIMINARY STATEMENT

THE PROSECUTION IN ITS STATEMENT OF THE FACTS MISLEADS THE COURT WHEN IT AVERS THAT APPELLANT ARMANDO ALVAREZ WAS AWARE OF THE FACT THAT A LARGE SHIPMENT WAS BEING DISTRIBUTED AMONG MANY BUYERS (PAGE 5 OF STATEMENT OF FACTS) FOR THE GOVERNMENT, THE RECORD REVEALS IN ITS ENTIRETY THAT APPELLANT ALVAREZ :

1.- NEVER KNEW ABOUT THE ARRIVAL OF ANY SHIPMENT
2.- WAS NOT CONNECTED BY THE TESTIMONY TO EITHER ORTEGA, HOUSEP CARAMIAN, MANUEL NOA, SEGUNDO CORONEL, INFIESTA, CALANA NOR WAS EVEN SEEN OR PHOTOGRAPHED BY ANY AGENT AT PRADAS GAS STATION (SEE TRIAL RECORD PAGES 189-191,297-302.,GXs.28-50_) NOR ENGAGED IN ANY CUTTING , MIXING, OR DISTRIBUTION OF SAID HEROIN. HE WAS MERELY A BUYER.

ON PAGE 11, MARKED 4, OF BRIEF FOR THE UNITED STATES, APPELLANT ALVAREZ WAS NOT A PART OF SAID CONSPIRACY, NOR CONNECTED TO IT, WHICH IS AN ENTIRELY DIFFERENT ONE TO THAT FOR WHICH HE STOOD TRIAL, SAID CONSPIRACY BEING TRIED UNDER INDICTMENT No.- 70 CR.524 (S.D.N.Y.) Filed June 26th, 1970.
AND IN WHICH APPELLANT ALVAREZ WAS NOT NAMED AS DEFENDANT OR CO-CONSPIRATOR NOR EVER SEEN BY ANY AGENT NOR TESTIMONY AS TO HIS NAME OR PRESENCE EVER BEING MENTIONED IN THE WHOLE RECORD OF TRIAL, WHICH RECORD IS HEREBY ENCLOSED AND MADE A PART OF APPELLANTS REPLY BRIEF AS EXHIBIT "A" FOR THE COURTS PERUSAL.

IT LOGICALLY FOLLOWS THAT THE COURT ERRED IN NOT GRANTING A JUDGEMENT OF AEQUITAL AT THE CLOSE OF THE GOVERNMENTS CASE WHEN THE PROSECUTION FAILED AS A MATTER OR LAW TO SHOW THAT DEFENDANT ARMANDO ALVAREZ WAS A MEMBER OF THE CONSPIRACY.

IN ORDER FOR THE CHARGE OF CONSPIRACY TO BE SUSTAINED THE GOVERNMENT MUST SHOW THE FOLLOWING :

1.- THAT THE DEFENDANT ALVAREZ KNOWINGLY AND WILLFULLY BECAME A MEMBER OF THE CONSPIRACY.

2.- THAT ARMANDO ALVAREZ PURCHASED THE NARCOTICS IN IN QUESTION WITH KNOWLEDGE OF THEIR ILLEGAL IMPORTATION.

IT IS RESPECTFULLY SUBMITTED THAT AT NO TIME DID THE DEFENDANT ALVAREZ, INTEND TO BECOME A MEMBER OF THE CONSPIRACY AND THAT ANY ACTIONS ON HIS PART WERE IN FURTHERANCE OF HIS OWN ENDS AND NOT THE ENDS OF THE ALLEGED CONSPIRACY.

IT IS CLEAR BY THE ACTIONS OF ALVAREZ, THAT A MERE BUYER- SELLER RELATIONSHIP WAS TO BE ESTABLISHED, THAT IS, ALVAREZ, WAS INTERESTED IN BUYING NARCOTICS AND DID NOT CARE FROM WHOM HE PURCHASED SAME. THE SELLERS RODRIGUEZ AND GONZALEZ TREATED ALVAREZ AS A CUSTOMER AND NOT AS PART OF THEIR OPERATION. / T.R. 231-233, 900-903-908-915.235-237. 237-238.

THE TESTIMONY OF MANUEL NOA, AND CORONEL CLEARLY SHOWS THAT ARMANDO ALVAREZ WAS NEVER A MEMBER NOR JOINED THE ALLEGED CONSPIRACY TO IMPORT OR DISTRIBUTE THE 60 KILOS. THE FACT THAT KNOWLEDGE THAT DRUGS ARE FOR SALE AND THE BUYER BUYS ON MORE THAN ONE ALLEGED OCCASSION DOES NOT AUTOMATICALLY CONVERTS THE BUYER INTO A SMUGGLER OF SAID DRUGS OR A MEMBER OF A CONSPIRACY TO DISTRIBUTE SAME IN VIOLATION OF LAW i.e. " A CERTAIN DRUGSTORE,

ADVERTISES DRUGS FOR SALE, A CUSTOMER, UNKNOWING SAME HAD BEEN IMPORTED BY CONSPIRATORS CONTRARY TO LAW, OR HOW THEY WERE ACQUIRED, BUYS FROM THEM, HE IS MERELY A BUYER AND NOT A MEMBER OF THE CONSPIRACY TO IMPORT OR DISTRIBUTEDUNLAWFULLY. THE LAW PROTECTS IN THIS RESPECT THE INNOCENT AND THE GUILTY WITH THE SAME SAFEGUARDS.

TESTIMONY OF RODRIGUEZ AND ALVAREZ CLEARLY SHOWS THAT DEFENDANT ARMANDO ALVAREZ DID NOT KNOW ANYTHING ABOUT NOR WAS CONNECTED NOR PARTICIPATED IN THE TRANSPORTATION, CONCEALMENT, RECEIVING,STASHING, CUTTING OF THE ALLEGED 45 KILOS . T.R.

SINCE CONSPIRACY IS CLEARLY AN INTENT CRIME, IT IS IMPORTANT THAT THE INTENT OF THE PARTIES TO BE CHARGED WITH THE CONSPIRACY BE CAREFULLY EXAMINED, CLEARLY IN THE CASE AT BAR THE INTENT OF ALVAREZ AND THE INTENT OF THE OTHER PARTIES NEGATED A CONSPIRACY.

THE LEADING CASE OF U.S. v. KOCH 113 Fed 2nd 932 2nd Circuit 940., SETS OUT THE POSITION OF ALVAREZ " THE PURCHASE OF COCAINE FROM MAURO, WAS NOT ENOUGH TO PROVE A CONSPIRACY IN WHICH MAURO AND THE APPELLANT PARTICIPATED , THEY HAD NO AGREEMENT TO ADVANCE ANY JOINT INTEREST. THE APPELLANT BOUGHT AT A STATED PRICE AND WAS UNDER NO OBLIGATION TO MAURO, EXCEPT TO PAY HIM THE PRICE. THE PRUCHASE ALONE WAS INSUFFICIENT TO PROVE THE APPELLANT A CONSPIRATOR WITH MAURO AND THOSE WHO WERE HIS CO-CONSPIRATORS. (DICKERSON v,U.S.5 CIRCUIT. Fed. 2nd. 837). IT WAS NECESSARY TO THE GOVERNMENTS CASE TO SHOW THAT THE APPELLANT WAS IN SOME WAY KNOWINGLY ASSOCIATED WITH THE UNLAWFUL COMMON ENTERPRISE TO IMPORT THE DRUGS AND DISPOSE OF THEM UNLAWFULLY. UNITED STATES v., Peoni, 2nd Circuit.100.Fed.2nd.401, Meyres v., U.S., 9 Circuit 89 Fed. 2nd. 734. (Id. at Page 983).

FURTHERMORE, THE KNOWLEDGE, INTENT, AND IMPORTATION OF THE DRUGS CAN NOT BE IMPUTED TO ALVAREZ, SINCE BY VIRTUE OF HIS PURCHASES, HE NEVER INTENDED TO BECOME A MEMBER OF THE CONSPIRACY AND THE CONSPIRATORS NEVER INTENTED TO ALLOW HIM TO BECOME SUCH A MEMBER.

CLEARLY IF A CONSPIRACY EXISTED, THE ULTIMATE END WAS TO BE AHIEVED AT THE TIME OF PRESENTMENT OF THE SALE TO ALVAREZ, THATIS, THE "CHAIN" OF THE CONSPIRACY ENDED AT THE TIME THE NARCOTICS WERE TO BE SOLD TO THE PURCHASER.

THE CONCURRING OPINION OF Mr. JUSTICE JACKSON, IN THE LEADING CASE OF KROLEWITCH v., U.S. , 336 U.S. 449, BETTER SETS FORTH THE POSITION OF THE DEFENDANT ALVAREZ IN THE CASE AT BAR;

" AS A PRACTICAL MATTER, THE ACCUSED AUSTIN IS CONFRONTED WITH A HODGE PODGE OF ACTS AND STATEMENTS BY OTHERS WHICH HE MAY NEVER HAVE AUTHORIZED OR INTENDED OR EVEN KNOWN ABOUT, BUT WHICH HELPED TO PERSUADE THE JURY OF EXISTENCE OF THE CONSPIRACY ITSELF. IN OTHER WORDS, A CONSPIRACY OFTEN IS PROVED BY EVIDENCE THAT IS ADMISSIBLE ONLY UPON ASSUMPTION THAT THE CONSPIRACY EXISTED. THE NAIVE ASSUMPTION THAT PREJUDICIAL EFFECTS CAN BE OVERCOME BY INSTRUCTIONS TO THE JURY OF BLUMENTHAL v., U.S. 232 U.S. 339. 92 L.ed 1554, ALL PRACTICING LAWYERS KNOW TO BE UNMITIGATED FICTION. SEE SKIDMERE v., BALTIMORE AND Q R Co. (C.C.A. 2nd. N.Y.) 167 Fed 2nd. 54 at page 853. ***

*** *** DO NOT SEE THE SLIGHTEST WARRANT FOR JUDICIALLY INTRODUCING A DOCTRINE OF IMPLIED CRIMES OR CONSTRUCTIVE CONSPIRACIES. IT NEITHER ADDS A NEW CRIME OR EXTENDS AND OLD ONE. TRUE, THE MODERN LAW OF CONSPIRACY WAS LARGELY EVOLVED BY THE JUDGES. BUT IT IS WELL AND WISELY SETTLED THAT THERE CAN BE NO JUDGE MADE OFFENSES AGAINST THE UNITED STATES AND THAT EVERY FEDERAL PROSECUTION MUST BE SUBSTAINED BY STATUTORY AUTHORITY. NO STATUTE AUTHORIZED FEDERAL JUDGES TO IMPLY, PRESUME OR CONSTRUCT A CONSPIRACY EXCEPT AS WOULD BE FOUND FROM THE EVIDENCE. TO DO SO, SEEMS TO APROXIMATE CREATION OF A NEW OFFENSE AND ONE THAT I WOULD THINK OF DOUBTFUL CONSTITUTIONALITY EVEN IF IT WERE ERECTED BY CONGRESS, AT ALL EVENTS IT ONW FUNDAMENTALLY AND IRREVOCABLY AT WAR WITH OUR PRESUMPTION OF INNOCENCE. " (id. at page 438.437)

FINALLY, A NOTE IN 72 HARVARD LAW REVIEW 920, SETS FORTH THE ISSUE MORE CLEARLY AS FOLLOWS :

"..... A PERSON DOES NOT AID AND ABET A CONSPIRACY BY HELPING THE "CONSPIRATOR" TO COMMIT A SUBSTANTIVE OFFENSE, FOR THE CRIME OF CONSPIRACY IS SEPARATE FROM THE OFFENSE WHICH IS ITS OBJECT.

IT IS NECESSARY TO HELP THE "CONSPIRATOR" IN THE COMMISSION OF THE CRIME OF CONSPIRACY, THAT IS, IN THE COMMISSION OF THE ACT OF AGREEMENT. ONLY THEN IT IS JUSTIFIABLE TO DISPENSE WITH THE NECESSITY OF PROVING COMMISSION OF THE ACT OF AGREEMENT BY THE DEFENDANT HIMSELF.

IN ALL OTHER CASES, TO CONVICT THE DEFENDANT OF CONSPIRACY, IT IS NECESSARY TO PROVE NOT ONLY KNOWLEDGE OF ENTERPRISE, BUT ALSO KNOWLEDGE OF ANOTHERS PART THAT HE INTENDED TO DO SO AND AGREE TO TACIT AGREEMENT TO GIVE AND ACCEPT SUCH HELP."

POINT II

WHETHER OR NOT A SINGLE CONSPIRACY OR MULTIPLE CONSPIRACY WERE PROVEN ?

The indictment charged that the Appellant and others were member of a single conspiracy to import heroin, to conceal and distribute heroin. Appellant contends that in fact at least two (2) different and distinct conspiracies were proven and this constitute a fatal variance from the indictment.

The original conspiracy was made of what the government later decided to characterize as the "suppliers". In this group fall several co-conspirators that are not named in the indictment as defendants mainly because they became government witnesses, in this or/ and in other cases, to wit : Roberto Arenas, Segundo Coronel,Manuel Noa, and Housep Caramian.

According to the testimony during trial, Coronel sent his man Noa to New York from Miami, Florida, with instructions to see Arenas regarding a heroin shipment and to follow Arenas instructions. (A... 60,61). He arrived in New York on February 2, 1970, and pursuant to his instructions reported to Arenas. (A...61). On the 5th day of February, Arenas called Noa and asked him to come and see him personally at which time he was

instructed to "escort Mr. Caramian to the place he would tell him ." (A...62). Noa and Caramian then picked up sixty (60) Kilos of heroin at Kennedy International Airport and Noa then stashed it in two different apartments. (A...64-65).

Noa kept the heroing for three weeks and was able to sell 5 of the 60 kilos. At this point however, "(he)..noticed on the streets that (he was) being constantly followed... and (he) went to see Mr. Arenas to... get rid of the merchandise." (A...65). Arenas told him at this point that "he didn't have any place to put it, because I'm leaving," and that is where the 60 kilos trip ends." (A...66).

It is patently clear from the foregoing that the original conspiracy ended right then and there, when the distributors Mr. Noa, decided to walk out of it because of his fear of bein g constantly followed. At this time, Arenas then finds a new distributor, Raul Ortega, who meets with him and Caramian who takes back 10 kilos and makes a new arrangement with Ortega, for the fast distribution of the rest of the shipment to wit: 45 kilos. (A... 72).

Ortega in turn recruited Ramiro Gonzalez and offers him 50 % of the business if he can get the customers and Gonzalez in turn recruted Miguel Rodriguez, and they set out to sell the heroin to the different defendants most of whom, as the record shows are independent narcotic peddlers, whom, have nothing to do with each others, among them the Appellant Alvarez, and little independent rings with no cross-over between them at all.

What this leads up to is, that in fact the Appellant Alvarez at the most, conspired with Rodriguez and Gonzalez and although he did not know him, nor had any idea of his existence with Ortega, in the alleged purchase of the six (6) kilograms, but not with the prior group - Noa, Caramian, Coronel and Arenas, and much less with the rest of the other defendants, who, were dealing independently with Rodriguez and Gonzalez, in the over all scheme designed to distribute the sixty (60) or the 45 kilos as the case might be. There being in fact, several conspiracies that the defendant must be acquitted.

To say that this whole series of events were a single and continuos conspiracies, is a gross oversimplification, which was flatly rejected in United States

v. Borelli supra. It is clear that the government rounded up a group of people, who, were involved in doing the same type of criminal acts and indicted all under the same conspiracy when in fact there were multiple conspiracies, Kotteakos v. United States, 328 U.S. 750.

Further yet, not only more than one conspiracy existed , but the Court failed to give the jury an adquate charge on multiple conspiracies, within the meaning of Kotteakos supra, and Borelli supra :

> What the evidence must show in order to establish that s conspiracy existed is that the members in some way or other, positively or tacitly, came to a mutual understanding to engage in a common unlawful agreement to violate Section 174 of the Federal Narcotics Laws which I have just described for you.
>
> All of the members need not have joined at the inception of the agreement , and I will discuss this point more fully with you later on. In determining whether or not there was such an unlawful agreement, you may judge the acts and conduct of each of the alleged conspirators as a whole and the reasonable inferences to be drawn from such evidence.
>
> An unlawful agreement mayexist even though the individual conspirators may have done some acts in furtherance of the common unlawful purpose apart from, or unkonwn to, the others.

Proof of several separate and independent conspiracies is not proof of the single overall conspiracy charged in the indictment, unless one of those conspiracies proved is the single conspiracy charged in the indicment.

What you must determine as to this element is whether the conspiracy charged in the indictment existed between two or more of the Alleged conspirators. If you find that no such conspiracy exsited, then you must acquit all of the defendants on Count 1.

In determining whether the alleged conspiracy exists, you may consider what the evidence shows as to changes in personnel and activity. You may find a single conspiracy even thcugh there changes in personnel or activities, provided that you find that some of the conspirators continued throughout the life of the conspiracy and that the purpose of the conspiracy continued to be that charged in the indictment. The fact that the parties are not always identical does not mean that there are separate conspiracies. In other words, if at all times the alleged conspiracy had the same overall primary purpose and the same nucleus of participants, the conspiracy would be the same basic scheme even though in the course of its operation additional conspirators joined in and performed additional functions to carry out the scheme while others were no active or had terminated their relationship.

In addi on the charge contained what is known as "the all or nothing charge " :

> What you must determine as to this element is whether the conspiracy charged in the indictment existed between two or more of the alleged conspirators. If you find that no such conspiracy existed, then you must acquit all of the defendants on Count 1.

Condenned in United States v. Borelli supra.

Wherefore, the Appellant respectfully contends that his conviction of the conspiracy count must be reversed and the count dismissed because the proof established multiple conspiracies, which constitutes a fatal variance; and the charge given to the jury demand a reversal.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT ALLOWED THE GOVERNMENT TO USE A CHART IN IT'S OPENING STATEMENT.

At the very beginning of this trial, the prosecutor informed the Court that it intended to use a chart to help the presentation of its opening statement to the jury.

This was strenously objected by the defense counsels. However, the Court overruled the objection and allowed said chart's use.

The Appellant contends that this chart, staring at the jury before any evidence whatsoever is presented by the government with its pictorial value shown to the jury, at the outset of the trial by the prosecutor, labelling the Appellant as a "buyer of heroin " was inflamatory and prejudicial to such an extent that it could not be cured by any possible defense as it created upon the mind of the jurors the guilt of appellant, as indelibly as a tatoo, upon the skin. Thus depriving Appellant of a fair trial as guaranteed by the XIV and VI Ammendment of the Constitution. This act being done with the full power and majesty of the Attorney for the United States, before a jury, which made it highly believable.

The 6th Ammendment of the Constitution clothes the Defendant with the right to face the witnesses against him in a criminal prosecution and to cross examine them, the chart used by the government was a "silent witness", a hearsay witness by the prosecutor, and used by him to arouse the passion and simpathy of the jury, planting prejudice in their minds, said chart being based on conclussions and speculations (See Aronson v. Mc. Donald 248 Fed. 2nd. 328-591).

The deprivation of the right to cross examine this "silent witness", deprived the Defendant of a fair tiral and at the time of its legend explanation to the jury by the prosecution, labelling the defendant as a "buyer", planted in the minds of the jurors, the guilt of the Defendant, in contravention of Defendant's God given rights, under the 6th and XIVth Ammendment to the Constitution. This was mortal and reversible error.

POINT III

THE COURT SHOULD HAVE GRANTED APPELLANT'S MOTION FOR DIRECTED VERDICT.

At the end of the government's case, Appellants attorney made a motion for a directed verdict, as to the substantive Count, on the grounds that the government had not proven its case against the Appellant, which motion was denied. (A...74)

Count Eight (8) of the Indictment charged the defendant as follows :

COUNT EIGHT

The Grand Jury further charges:

In or about the months of March and April, 1970, in the Southern District of New York, Armando Garcia Alvarez, a/k/a Armando Alvarez, a/k/a Armando Garcia, a/k/a Andres Alvarez, a/k/a Joaquin Gonzalez, a/k/a "El Chino", the defendant, unlawfully, wilfully and knowlingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit : approximately six kilograms of heroin, after the said narcotic drug had been imported and brought into the United States contraty to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contraty to law in that the importation and bringing of any

> narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs finds to be necessary to provide for medical and legitimate uses only, is prohibited.

The proog presented at the trial, showed that this charge was the result of at least four of five different purchases by the Appellant from Ramiro Gonzalez, each being an independent transaction.

Not only was the proof offered at trial at variance with the charge itself, but in addition it was presented in such a confused and contradictory manner, that the jury could not have without a reasonable doubt find the defendant guilty.

For instance :

A.- Rodriguez claimed,that him and Gonzalez met the Appellant at the Alamac Bar for the first time, but that there was no discussion of narcotics. (A...14)

A-1.- Gonzalez states that at that same meeting, him and Rodriguez discussed with the defendant-appellant the purchase of one (1) kilo of heroin, price and place of distribution.

B.- Rodriguez claimed that appellant paid thru Prada Four Thousand ($4,000.00) Dollars, to him as part payment for said kilo and later received from "Willie" $14,000.00,more (A...18-20.)

B-1.- Gonzalez testified that the said payment was made by the appellant to him, personally at his aunt's house at Broadway and 136th Street, and for the amount of $20,000.00.. (A...41)

C.- Rodriguez claimed that he made by himself a delivery of one and a half (1 1/2) kilos of heroin to Appellant outside his car in the corner of flower shop at Broadway and 158th Street, (A...21-22)

C-1.- Gonzalez in turn testified, that he was the one that made the delivery from the car which Rodriguez was driving and he clearly remembers hos appellant was dressed taht day. (A... 54-57)

It is appellant's contention that from the above irreconcilable differences, in the testimony of the government witnesses, the jury could not find the defendant guilty of "receiving, buying, selling, concealingor facilitating, the transportation " of six (6) kilograms of heroin as charged in the indictment as the testimony shows that there is an absolute conflict as to where the agreement was made, the price paid for and more important yet, both claim to have made the same deliveries and accepted different sums of moneys at the same time.

Further yet, these irreconcialable differences, this "fight" and discrepancies in testimony among the witnesses to take credit for alleged deliveries and collection of payments hac to be known by the United States Attorney, before trial, either during the grand jury's testimony of the witnesse and/ or during her discussion of their testimony in the preparation for trial, and it was not corrected by a superseading indictment, nor was, it made known to defense counsel before trial, all in violation of Defendants rights under the Fourteenth Ammendment.

In summary, it all adds up to the presentation of considerable amount of testimony completely contradictory which can not substantiate the charge.

POINT IV

THE TRIAL COURT'S CHARGE CONTAINED REVERSIBLE ERROR.

A.- The Marshaling of the Evidence.

The Trial Court in its charge to the jury, marshaled the evidence to which counsel for the appellant Alvarez excepted to. (A...82-A.)

It is Appellant's contention that the marshaling of the evidence was totally prejudicial as it included the testimony that was presented by the witnesses Rodriguez and Gonzalez against the Appellant, but totally ignored the serious contradiction in their testimony.

This type of marshaling coming from the bench at the end of the trial court have but one effect in the mind of the jury: the guilt of the Appellant.

POINT

PURSUANT TO FEDERAL RULES OF APPELLATE PROCEDURE 28(i) APPELLANT ALVAREZ RESPECTFULLY INCORPORATES BY REFERENCE ANY ARGUMENTS RAISED BY CO-COUNSEL INSOFAR AS THEY ARE APPLICABLE TO HIM.

CONCLUSION

FOR THE ABOVE REASONS, THE JUDGMENT APPEALED FROM SHOULD BE REVERSED.

Respectfully Submitted,

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IN THE SECOND CIRCUIT
COURT OF APPEALS.
DOCKET NO: 74-1388

UNITED STATES OF AMERICA, *
Plaintiff-Appellee, *
vs. *
ARMANDO ALVAREZ, et al. *
Defendant-Appellant. *
*

AFFIDAVIT OF CERTIFICATE
OF SERVICE

STATE OF FLORIDA)
ss:
COUNTY OF DADE)

BEFORE ME, the undersigned authority personally appeared GINO P. NEGRETTI, Attorney At Law, of Suite 103 3061 N.W. 7th Street, Miami, Florida, who, after being first duly sworn, deposes and says:

1.- That he is the attorney for Appellant ARMANDO ALVAREZ.

2.- That Affiant served two (2) copies of the Reply Brief of Appellant ARMANDO ALVAREZ, on HON. SHIRAH NEIMAN, Assistant United States Attorney, at her offices at the United States Courthouse, Foley Square, New York City, New York.

3.- That Affiant mailed said copies within the 14 days after receiptal of the Brief of the Government in compliance with the Rules of this Court.

4.- Affiant further states that he has mailed to the Clerk of this Court, the required copies in compliance with the Rules of this Court.

AFFIANT FURTHER SAYETH NOT.

Gino Negretti
GINO P. NEGRETTI
Affiant

SWORN TO AND SUBSCRIBED before me
this 27 day of September, 1974.

Shirley Negretti
NOTARY PUBLIC

NOTARY PUBLIC, STATE of FLORIDA at LARGE
MY COMMISSION EXPIRES MAR 27, 1978
bonded By American Fidelity Insurance Co.

MY COMMISSION EXPIRES: